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EX PARTE OR LATE FILED

September 19, 2002

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Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

SEP 19 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**NOTICE OF EX PARTE
COMMUNICATION**

Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128; Colorado Payphone Association Petition for Reconsideration re Retroactive Adjustment of Intermediate Period Compensation; Retroactive Adjustment of Interim Compensation

Dear Ms. Dortch:

On September 18, 2002, Vince Sandusky, President of the American Public Communications Council ("APCC"), APCC board members Gary Pace, CEO of Midwest Communications Solutions, Inc., St. Louis, MO, and Vincent Townsend, President of Pay Tel Communications, Inc., Greensboro, NC, and APCC counsel Albert H. Kramer and Robert F. Aldrich of this law firm, had a meeting with Commissioner Kevin Martin and his Senior Legal Advisor Dan Gonzalez. The matters discussed are summarized in the enclosed handout entitled "Payphone Compensation True-Up Issues."

Also enclosed is a table handed out at the meeting, entitled "Possible True-Up Outcomes for PSPs and IXC's," from which certain information subject to potential IXC claims of confidentiality has been redacted. The purpose of the table is to show the impact of recent interexchange carrier ("IXC") bankruptcies on the outcome of a true-up of compensation for the Interim Period and/or Intermediate Period. APCC submitted a similar table in this proceeding in its ex parte letter dated July 25, 2002. In the table submitted with this letter, the presentation has been revised, and some of the payment estimates have been adjusted to reflect additional requirements stated in the Commission's Fourth Order on Reconsideration in this proceeding, released January 31, 2002.

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A confidential version of the table containing the redacted data has been separately submitted. The amounts shown in the table were computed using information that was provided by IXC's to APCC Services, Inc. in the dial-around compensation process. As previously explained, APCC does not believe that this information is subject to a confidentiality requirement, but requests the Commission to treat it as such until the IXC's to whom the information pertains have had an opportunity to object to its disclosure. Accordingly, we have redacted that information from the table enclosed with this public ex parte letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich". The signature is fluid and cursive, with the first name "Robert" and last name "Aldrich" clearly distinguishable.

Robert F. Aldrich

Enclosures

cc: Commissioner Kevin Martin
Dan Gonzalez

AMERICAN PUBLIC COMMUNICATIONS COUNCIL

**Payphone Compensation True-Up Issues
Ex Parte Presentation
September 2002**

I. The Commission is not required to order independent PSPs to pay refunds for the Intermediate Period (October 7, 1997 to April 21, 1999)

- The standard for ordering a true-up is equity
- The court of appeals expressly left it to the FCC to decide whether equity requires a true-up
- The Commission may treat independent PSPs differently from LEC PSPs if the equities are different for each group
- APCC has addressed every objection to relieving independent PSPs from payment of refunds for the Intermediate Period

II. The Commission may not lawfully require independent PSPs to refund compensation for the Intermediate Period

- **FCC decision making on retroactivity issues must be consistent**
 - **The FCC elected not to order IXC's to make retroactive payments to independent PSPs for the Early Period (June 1, 1992 to November 6, 1996) after the court remand of Early Period compensation**
 - ◆ **Independent PSPs would have received more than \$135 million in additional payments for the Early Period**
 - **Consistency requires that the FCC should not order retroactive refunds by independent PSPs for the Intermediate Period**

II. The Commission may not lawfully require independent PSPs to refund compensation for the Intermediate Period (cont'd)

- **The FCC must ensure that PSPs are fairly compensated for the Intermediate Period**
 - **Independent PSPs were not unjustly enriched in the Intermediate Period -- due to non-payment by resellers and other problems, the compensation they actually collected did not cover the cost of a marginal payphone**

II. The Commission may not lawfully require independent PSPs to refund compensation for the Intermediate Period (cont'd)

- **Requiring independent PSPs to pay refunds would unlawfully compel them to bear the entire burden of recent IXC bankruptcies**
 - Independent PSPs are owed tens of millions in Interim Period compensation by bankrupt IXCs who will never pay it
 - Independent PSPs owe millions in Intermediate Period refunds to IXCs
 - Independent PSPs should “net” \$20 million “on paper” – but due to the bankruptcies, even on paper they will lose up to \$10 million: a \$30 million swing
 - The Commission may not lawfully disregard the reality of IXC bankruptcies and their impact on PSP cost recovery
 - The Commission may not lawfully order a true-up that will reduce independent PSPs’ compensation below the FCC-determined level of minimum cost recovery

II. The Commission may not lawfully require independent PSPs to refund compensation for the Intermediate Period (cont'd)

- **Requiring independent PSPs to pay refunds would unlawfully compel them to bear the entire burden of recent IXC bankruptcies (cont'd)**
 - **The burden of IXC bankruptcies will be shared among independent PSPs and IXCs if independent PSPs are not required to pay refunds for the Intermediate Period**

III. Based on the equities, independent PSPs should not be required to pay Intermediate Period refunds to IXC

- Independent PSPs, unlike LEC PSPs, lost far more Early Period compensation than they would owe the IXC (collectively or individually) in refunds for the Intermediate Period**
- Independent PSPs were not unjustly enriched – they were undercompensated for the Intermediate Period**
- The IXC has already recovered their Intermediate Period payments from their customers and don't plan any refunds**
- The “cost-recovering” \$.24 rate is only fair if all IXC actually pay their share of payphone costs -- the rate is not fair if 40% of the IXC industry is bankrupt and can't pay their share**
- Intermediate Period refunds compound the administrative nightmare of a true-up in which IXC can unilaterally “take back” refunds by reducing future compensation payments**

IV. Whatever the final shape of the true-up, the procedures must be fair

- **FCC should not allow IXC's to "take back" refunds by reducing future compensation payments**
- **If the FCC allows IXC's to "take back" refunds:**
 - **Take back should be spread over the same number of quarters as the overpayment occurred**
 - **IXC's may not "take back" refunds if disputed by the PSP**
 - **IXC's must offset any amounts they owe for the Interim Period against the amount of Intermediate Period refunds before any "take back"**

THE “REAL WORLD”

- PSPs will take an \$18 million dollar hit by some IXC's taking back. Based on experience, there is no way to know if we will ever collect the amount we are owed by the other IXC's. There is a swing from \$23 million in income to an \$18 million takeback – a \$41 million swing. This is on top of a reduced DAC payment for the 2d quarter because of the WorldCom bankruptcy.

THE “REAL WORLD”

- Lenders today view DAC as their primary collateral. With DAC impaired, they will accelerate constriction of the financing and shut down IPSPs.
- The ILECs are exiting the business.
- Who will be providing payphone service?
- You are knocking down the last provider standing.

**POSSIBLE TRUE-UP OUTCOMES FOR INDEPENDENT PSPS AND IXCS
(w/ ADJUSTED SURROGATE)**

1. INTERIM ONLY (\$ M)

	On Paper	A	B	1A-20P	1B-20P
IXCs Net	(\$47.75)	(\$8.51)	(\$3.51)		
IPSP Net	\$47.75	\$8.51	\$3.51	(\$14.47)	(\$19.47)

2. INTERIM + INTERMEDIATE (\$ M)

	On Paper	A	B	2A-20P	2B-20P
IXCs Net	(\$22.98)	\$4.74	\$9.74		
IPSP Net	\$22.98	(\$4.74)	(\$9.74)	(\$27.72)	(\$32.72)

1. INTERIM ONLY = Independent PSPs included in true-up for the Interim Period only.
2. INTERIM & INTERMEDIATE = Independent PSPs included in true-up for both periods.

On Paper = Results of true-up "on paper," assuming all IXCs could pay what they owe
A = MCI/W, Global, and 50% of Unknown IXCs don't pay, all other IXCs pay/collect
B = MCI/W, Global, and 100% of Unknown IXCs don't pay, all other IXCs pay/collect

2A-20P = Net gain or (loss) for each party due to non-payment by MCI/W, Global, and 50% of Unknown IXCs

1A-20P = Net gain or (loss) for each party in same scenario if no Intermediate Period refund is required

2B-20P = Net gain or (loss) for each party due to non-payment by MCI/W, Global, and 100% of Unknown IXCs

1B-20P = Net gain or (loss) for each party in same scenario if no Intermediate Period refund is required

Amounts include interest to May 6, 2002. Amounts are for PSPs represented by APCC Services, but results would be similar for other independent PSPs.

"Unknown" includes roughly 7% of Interim Period traffic that is not clearly allocable to the six named IXCs, based on APCC's initial analysis of RBOC data.

All "Interim and Intermediate" scenarios assume that IXCs other than the six named IXCs receive a total of \$2 million in Intermediate Period refunds.